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A Resource From Montgomery County's Office of the County Attorney

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Douglas M. Duncan, County Executive

Charles W. Thompson, Jr., County Attorney

The Tree House

Ramona Bell-Pearson

The Child Assessment Center is a public/private partnership between Montgomery County and the Primary Care Coalition. Here, children suffering from alleged maltreatment can be evaluated and receive treatment for physical abuse, sexual abuse, and neglect. The Center is staffed by doctors, mental health professionals, and victim advocates.

Affectionately known as the Tree House, the Center is located at 7300 Calhoun Place, Suite 600, in Rockville. It began in 2002 as a not-for-profit project of the Primary Care Coalition, working in partnership with the Montgomery County Police, Child Welfare Services of the Department of Health and Human Services, the State's Attorney's Office, and the Office of the County Attorney.

Children are referred to the Center by Child Welfare Services, the Police, prosecutors, or treating medical and mental health professionals. The Center currently serves

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Timely Modifications Take on New Importance

Barbara Jay

"A special exception refers to a permissive land use category authorized by a zoning or administrative body pursuant to the existing provisions of the zoning law and subject to guides, standards and conditions for such special use which is permitted under provisions of the existing zoning law." Stanley D. Abrams, *Guide to Maryland Zoning Decisions*, § 11.1 (4th ed., Lexis Nexis 2002). In Montgomery County, the Board of Appeals is the body authorized to decide whether a proposed special exception use meets the general and specific standards applicable to that use and, in turn, to grant or deny the special exception.

When a special exception grows or changes, the special exception holder is charged with seeking a "modification" of the underlying use from the Board of Appeals. Lesser changes—those that do not substantially change the nature, character, or intensity of the special exception use and do not substantially impact traffic—can be accomplished without the need for a hearing through the "administrative modification" process. An administrative modification is, generally, requested by letter and considered by the Board at one of its bi-weekly work sessions. If the modification is approved, the Board issues a resolution to that effect and there is an after-the-fact, 15-day window within which to request a hearing on the Board's action. Larger changes—those that substantially alter the nature, character, intensity of the use, or the conditions of the original grant—trigger the need for a hearing prior to the Board's vote on the requested modification.

Until recently, special exception holders who were notified by the Department of Permitting Services that

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over 500 children per year, ranging in age from birth to 18 years old. Clients are children who are involved with several agencies and have a need for services from several professionals. They, generally, have or had an open investigation with the Police or Child Welfare Services.

The overall purpose of the Center is to reduce and heal the trauma experienced by children who are abused by a family or household member or care giver. The abuse involved may be sexual abuse, physical abuse, or serious neglect. The Center works through multi-disciplinary case management with the Departments to enhance the quality of investigations and case decision-making, to provide comprehensive medical evaluations by a physician with expertise in child maltreatment, to provide quick access to mental health evaluations, and to provide ongoing mental health services to children and families. As part of their educational services, the Center provides information about the criminal justice process and resources available to the child and the non-offending family members. Finally, the Center trains and consults with County employees and community professionals who provide services to children. ❖

Timely Modifications

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their special exceptions were being operated in violation of the terms of their grant often sought to use modifications of their special exceptions as a way to ameliorate the identified violations and bring their special exception grant into compliance with their actual use. The Board no longer allows special exception holders to “modify” their way out of a Notice of Violation but, instead, requires that these special exception holders go through a “show cause” proceeding prior to any modification (i.e. show cause why the Board should not revoke the underlying special exception). With revocation a possibility, this new “get tough” approach emphasizes the importance of both understanding the parameters of the special exception granted and seeking timely modifications where necessary. ❖

New Workers’ Compensation Laws for 2006

Wendy Karpel

Many of the new laws that the Maryland State Legislature enacted took effect on July 1. In the area of workers’ compensation, there were several bills introduced in the legislature covering a wide array of topics, including changing the definition of an accidental injury, prohibiting all workers’ compensation benefits to undocumented workers, and prohibiting written solicitation of injured employees by attorneys. Although there were 39 bills dealing with workers’ compensation issues introduced, there were only three new laws enacted this session that directly affect Montgomery County.

The first bill changes the time period for an employer/insurer to contest a claim or begin paying benefits. Now, the time period is measured from the time that the Workers’ Compensation Commission mails the notice of claim, rather than from the time the claim is filed. The effect of this law is to give the employer more time to consider contesting a claim.

The second bill increases the maximum limits on the amount that the Workers’ Compensation Commission may assess governmental self-insurance groups and self-insured employers for actuarial studies and audits from \$500 to \$1,500.

The third bill affects persons who volunteer in a civil emergency like a catastrophic health emergency. Under the new law, anyone who volunteers to assist the state when a state of emergency is declared is covered by the state for workers’ compensation injuries, unless they have coverage elsewhere.

Workers’ compensation continues to be a major expense to Montgomery County. All managers and employees need to make a conscious effort to follow safety procedures in an attempt to reduce workers’ compensation expenses. ❖



Tick-Tock

Ed Lattner

Most people know that a party aggrieved by the decision of a quasi-judicial agency can file an “administrative appeal” with the circuit court. But when does that appeals clock start ticking? Is it from the date of the quasi-judicial agency’s decision? The date the agency mailed it out? Or, perhaps, not until the date the party received the decision? A recent court decision reminds us that the appeal period depends upon the wording of the statute that governs the particular agency.

In this case, the plaintiff filed a complaint against his insurance company with the Maryland Insurance Administration. The Administration issued a final decision dated October 14, 2004. The Administration mailed the decision that day, but the plaintiff did not receive it until October 20. The plaintiff filed his appeal with the circuit court on November 19 and the insurance company asked the court to dismiss it as untimely.

The Maryland Rules of Procedure state that, unless otherwise provided by statute, an administrative appeal must be filed within 30 days after the latest of,

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency’s order or action, if notice was required by law to be received by the petitioner.

The appellate court concluded that the appeal period began to run from the date the plaintiff received the Administration’s final decision and, therefore, the plaintiff’s appeal was timely. The Maryland insurance code states that a person must file an administrative appeal within 30 days after the decision “was served on the persons entitled to receive it.” The court interpreted this provision to require that a party actually receive the decision before the appeal period began to run. The court contrasted this provision with the statute applicable to appeals from the Maryland Tax Court (another administrative agency), which merely requires the clerk of the Tax Court to mail a copy of the final decision to the parties. Thus, the appeal period in a Tax Court case begins to run from the date that agency mails its decision.

In Montgomery County, most quasi-judicial agencies are governed by the Administrative Procedures Act. This Act requires each agency to send a copy of its final decision “simultaneously to all parties of record and their counsel” and it authorizes an aggrieved party to appeal a decision to the circuit court, but it does not provide a specific time for noting an appeal. Each agency must look to its own enabling law to determine (1) the time for noting an appeal (typically 30 days, although the Animal Matters Hearing Board provides only 10 days), and (2) whether the law requires the agency to merely send a copy of its decision to the parties or whether the agency must serve its decision on the parties. ❖

J.T.W. v. Centre Insurance Co., 2006 Md. App. LEXIS 61 (2006).

Office of the County Attorney – Legal Views
101 Monroe Street, 3rd Floor, Rockville, MD 20850
(240) 777-6700
<http://www.montgomerycountymd.gov/govtmpl.asp?url=/content/countyatty/index.asp>

Publisher

Charles W. Thompson, Jr., County Attorney

Managing Editor

Janita R. Lillard, Paralegal Specialist

Editorial Staff

Sharon V. Burrell

Betty N. Ferber

Karen L. Federman Henry

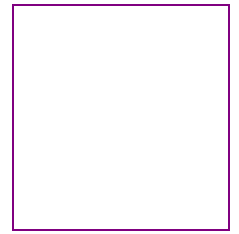
Edward B. Lattner

Patricia P. Via

Legal Views is a monthly newsletter prepared as part of the County Attorney’s preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.



Legal Views
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, MD 20850



ADDRESS CORRECTION REQUESTED

Six-Step Recipe for Success

BE PASSIONATE. *Love what you do.*

THE GREATEST WEALTH IS FAMILY AND FRIENDS. *Enjoy their love.*

EVERY DAY IS SPECIAL. *Make it the best it can be.*

“NO” IS UNACCEPTABLE. *Don’t stop there. Go for “yes.”*

CELEBRATE EXCELLENCE. *Make people feel important.*

THE GREATEST FAILURE IS NOT TO TRY. *When you dream, wake up and do.*

Jeffrey Gitomer, From “Women as Managers”

Lists to Live By, 2nd Collection, Alice Gray, Steve Stephens, John Van Diest